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WALSH EMPLOYMENT  
RELATIONS BOARD

CASE NO. 4336

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At hearing, the parties stipulated that the issues before this Administrative Law Judge [ALJ] are as follows:

<sup>1</sup>All references to the Iowa Code will be to the 1989 Code.

1. What is the employer relationship to the bargaining unit or units to be determined: one employer, two separate employers, or a joint employer relationship?
2. Is it appropriate to have one bargaining unit or two?
3. Is the position of City Clerk supervisory and/or confidential?
4. Is the position of the Director of Public Works supervisory?
5. Is the position of General Manager of the Utilities supervisory?

Based on the entire record in this case, I make the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

Eldridge is a small municipality in east-central Iowa. It has a city council/mayor form of government. The City's police department is certified as a collective bargaining unit and is not subject to this petition. Subordinate to the City Council are: City Administrator, City Engineer, City Attorney, Utility Board, Park Board, Planning and Zoning Commission and Cable TV Commission. At issue in the instant case are employees subordinate to the City Administrator and the Utility Board.

City facilities include the City Hall which houses the police department, city council chambers, the city administrator's office, and an open clerical area. The City also has a city maintenance building and three sewer facilities. While other facilities may exist, none were referenced in the record.

The Utility Board is comprised of three members who are appointed by the Mayor and approved by the City Council. The

Utility Board, as an administrative agency, is charged with the management and control of the water and electric utilities for the City. The Utility Board receives no tax revenues but relies on user fees, which the Utility Board sets, for operational funding. The City Council sets compensation for Utility Board members. Revenues received by the Utility Board are maintained in accounts separate from the City's accounts. The Utility Board also may borrow money independently.

The Utility Board and City Council are jointly involved in numerous areas. The personnel policies, which were submitted into the record as a partial document, cover all City employees. Budget submission to the State of Iowa is done as a single document. A single payroll account is used for payment of all City employees, although the Utility Board is subsequently billed for its portion of the payroll. A single employer identification number is used for payment of employer payroll taxes. Equipment is shared between the City and the Utility Board with the Utility Board paying a pro rata share based on usage. The Utility Board's budget is prepared by the City Administrator following input from the Utility Board and the General Manager of the utilities. Until 1988, all employees were evaluated with the same evaluation instrument. Employee services in both the clerical area and the field operations area are liberally shared.

Compensation for employees who work for both the City and the Utility Board is set by joint resolution of the City Council and the Utility Board. The record is unclear which employees are

deemed to work exclusively for the City Council or the Utility Board and which employees are deemed to be joint employees. The only evidence to support a finding that a demarcation exists between employees of the City Council and employees of the Utility Board is the table of organization. Testimony reveals that all clerical employees are subject to direction from the City Council, the Utility Board, the City Administrator, the Director of Public Works, the General Manager of the utilities, and the City Clerk. Field operations personnel also perform duties in both subdivisions, public works and utilities. Exchange of personnel in field operations is moderately frequent. Either the Director of Public Works will approach the General Manager of the utilities or vice versa for temporary assignment of personnel when a task requires additional personnel. The City Administrator also works in both areas of responsibility. He receives direction from the Utility Board, attends all Utility Board meetings, receives monthly reports from the General Manager of the utilities, and is viewed by the General Manager as his "direct boss". This is in addition to the budget preparation mentioned above. Only one instance was cited where the Utility Board and the City Council did not set compensation by joint resolution. The situation cited dealt with a bonus which the Utility Board paid and the City did not. The record does not reflect which employees received this bonus and which did not, nor does the record reflect any impact the bonus may have had on basic compensation for employees. The Chairman of the Utility Board characterized the relationship between the City

Council and the Utility Board as "acknowledging we all live under one roof."<sup>2</sup> The record is such, and the crossover of duties and work performed is so pervasive, that this ALJ cannot find that any employee works exclusively for the City Council or exclusively under the Utility Board.

The City Clerk, Jean Schilling [Schilling] has been employed by the City for 22 years. In this capacity she works in close contact with the City Administrator and the City Council. Schilling's working relationship with the City Administrator changed with a change in City Administrators, which took place in 1988. Under the former City Administrator, Deborah Nier [Nier], Schilling provided information used in collective bargaining with the police department bargaining unit. Under the current City Administrator, John Dowd [Dowd], she does not. Under Nier, Schilling performed evaluations on subordinate clerical employees. Under Dowd, the evaluation system has been suspended because the evaluation instrument was deemed to be cumbersome and problematic. No formal evaluations have been conducted since 1988. Under Nier, Schilling made a recommendation for retention of a clerical employee to the City Administrator and City Council. Schilling does not have access to personnel files.

The City has a highly stable work force. The most recent clerical hired was two to three years prior to this petition. All of the clericals work in the open clerical pool area of City Hall. Three full-time clericals report to the City Clerk. Schilling

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<sup>2</sup>Transcript at 66.

approves overtime and leave time. There has been no discipline, discharge, layoff or recall of clerical employees. There have been no clerical grievances. While acknowledging that many individuals give direction to clerical staff, Schilling testified that she coordinates clerical activities to ensure that all clerical tasks are completed. The record does not reflect that there have been any transfers or promotions in the clerical area.

Prior to 1980, the positions of Director of Public Works and General Manager of the Utilities were occupied by a single incumbent. In 1980, Roger Kirby [Kirby] was hired as Director of Public Works and the positions became separate. In the capacity of Director of Public Works, Kirby determines the priority of work to be done. He directs employees to assigned tasks. He approves overtime and leave requests. In conjunction with the City Administrator, he makes recommendations for compensation levels of the sewer superintendent and two senior operators. These recommendations are generally approved by the City Council. He recommended the hiring of one senior operator since he became Director of Public Works, which recommendation was accepted by the City Council. Kirby also recommended the promotion and salary increase for an employee from operator to senior operator. This recommendation was also accepted by the City Council. Prior to 1988, Kirby performed evaluations on employees. Temporary transfers of employees to work in the utilities area of responsibility are approved by Kirby. Kirby has not been involved with discipline, discharge, layoff or recall of other employees.

There have been no formal grievances, but Kirby indicates that he has first step responsibilities in this area on behalf of the City.

The General Manager of the Utilities is Ron McGill [McGill]. The City's table of organization indicates positions subordinate to McGill's as water operator, electric foreman, lineman, and lineman apprentice. Currently, only the water operator and lineman positions are filled. While the table of organization also indicates clerical personnel under McGill's area of responsibility, McGill disavows any supervisory interaction between the clerical staff and him. McGill determines the priority of work to be done by the water operator and the lineman. He approves overtime and leave requests. He approves temporary transfer of employees to the Public Works department. McGill has not been involved in formal grievance handling. In the six years McGill has held the General Manager position, there has been no discipline, discharge, layoff, or recall of employees. Prior to 1988, McGill performed evaluations of his subordinate employees.

#### CONCLUSIONS OF LAW

At hearing the parties stipulated that the employees to be impacted by the petition were all regular full-time employees working 32 hours or more per week. This stipulation is hereby approved.

##### Issue No. 1

What is the employer relationship to the bargaining unit or units to be determined; one employer, two separate employers, or a joint employer relationship?

Section 20.3 of the Act defines a public employer as:

"Public employer" means the state of Iowa, its boards, commissions, agencies, departments, and its political subdivisions including school districts and other special purpose districts.

Governing body is defined as:

"Governing body" means the board, council or commission, whether elected or appointed, of a political subdivision of this state, including school districts and other special purpose districts, which determines the policies for the operation of the political subdivision.

The City argues that utility boards have been found to be public employers pursuant to the Act.<sup>3</sup> It further argues that other boards and commissions which determine the policies for operations and its employees are similarly public employers.<sup>4</sup> The City alleges that there is no joint employer relationship for reasons set forth in Cedar Rapids Public Library Board. The City draws a parallel between the aforementioned Library Board and the Eldridge Utility Board stating:

The Board's decision was based on the fact that the Library Board had exclusive control over the hiring, discharge, assignment and discipline of employees and had charge, control and supervision of its affairs, the expenditures of its funds and the overall operation of its functions. These same facts exist in this case and apply with equal force to the Utility Board.<sup>5</sup>

The Association did not argue this issue.

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<sup>3</sup>Mt. Pleasant Municipal Utilities, 75 H.O. 578.

<sup>4</sup>Cedar Rapids Public Library Board, 75 PERB 260.

<sup>5</sup>Employer's Brief at 9.



Pursuant to Section 388.4 of the Code of Iowa, "A utility board may exercise all powers of a city in relation to the city utility, city utilities, or combined utility system it administers...". The statute proceeds to set forth exceptions. It is apparent that the City Council has followed statutory guidelines in crafting its ordinance covering the Utility Board. The Utility Board exercises considerable autonomy in setting user fees and determining services to be provided. This evidence supports the City's contention that the City and the Utility Board are separate employers.

Under the facts and circumstances of this case, the symbiosis which exists between the City Council and the Utility Board and the employees at the clerical, field operations, and even the managerial levels, must be factored in. This interdependence is manifested in the City Administrator's role in the Utility Board's budget process, single budget submission to the State, joint resolution to set employee compensation, joint personnel policies, single payroll account and employer identification for payroll taxes, frequent interchange of employees performing tasks of the City or the Utility, and testimony from the Chairman of the Utility Board that acknowledges the interdependence between the City and Utility Board. This suggests either a single employer, the City, with a subordinate administrative agency, the Utility Board, or a joint employer relationship.

PERB has stated:

Under the National Labor Relations Act, it has been found that where there is an interdependence of operations,

joint or common supervision, common direction of labor relations policies, or other factors demonstrating joint control by two employers over the employees in question, "joint" employership exists, and the employees are deemed to be employed by both entities.<sup>6</sup>

There is sufficient evidence of autonomy exercised by the Utility Board that I cannot conclude that it is simply an administrative agency of the City. By statute, the Utility Board cannot be disbanded without submission to the voting public.<sup>7</sup> The above-mentioned interdependence precludes a finding that the Eldridge Utility Board exercises exclusive control of its operations as was found in the Cedar Rapids Public Library Board case. By application of the criteria used by PERB in the Jackson County Public Hospital case, I conclude that a joint employer relationship exists. The interdependence of operations has been amply explored. The City Administrator and department heads provide joint or common supervision. Joint resolution in payroll matters, joint personnel policies, and common evaluation system support a conclusion of common direction of labor relations policies.

#### Issue No. 2

Is it appropriate to have one bargaining unit or two?

Section 20.13(2) of the Code of Iowa states in relevant part:

In defining the appropriate bargaining unit, the board shall take into consideration, along with other relevant factors, the efficient administration of government, the existence of

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<sup>6</sup>Jackson County Public Hospital, 76 PERB 511 at 3.

<sup>7</sup>IOWA CODE, §388.2 (1989).

a community of interest among public employees, the history and the extent of public employee organization, geographical location, and the recommendations of the parties involved.

The City only argues this issue from the perspective that there are two separate employers and, therefore, two separate bargaining units are appropriate.

The Association argues that the efficient administration of government and a substantial community of interest support a conclusion that one unit is appropriate. In support of the Association's contention, it cites City of Independence.<sup>8</sup> In the Association's closing argument, it relies most heavily on the community of interest.

The City's argument is rendered moot with the prior conclusion that a joint employer relationship exists. This does not, however, preclude having two separate bargaining units where circumstances might dictate. In reviewing the position of the City if two separate units are deemed appropriate, the City uses a generic description of employees to be included in each of the units:

Unit One: All regular full-time utility employees working 32 hours or more per week employed by (sic) the the (sic) Eldridge Electric and Water Utility Board.

Unit Two: All regular full-time city hall employees and public works employees employed by the City of Eldridge.

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<sup>8</sup>City of Independence, 83 H.O. 2429. The Association erroneously cited the case number as 2249. This error was caused by the erroneous cite in the Topical Index and Digest of Decisions Interpreting the Iowa Public Employment Relations Act.

It is not possible to tell from these proposed unit descriptions whether the clerical personnel which are ostensibly under the jurisdiction of the Utility Board are to be under Unit One as utility employees or under Unit Two as City Hall employees. Potentially, these units could include employees as follows:

Unit One: As few as two employees with one water operator and one lineman, or as many as five with two clericals, one General Manager, one water operator and one lineman.

Unit Two: As few as four employees with one clerical, one Sewer Superintendent and two senior operators, or as many as eight employees with three clericals, one City Clerk, one Director of Public Works, one Sewer Superintendent and two senior operators.

The Association argues that having two sets of negotiations and two contract ratifications is not efficient administration of government. It bolsters this argument by pointing to the extensive cross-over between employees of the City and those of the Utility. Neither party argued that history and extent of public employee organization or geographical location might be determinative in this case. The City recommends two units and the Association recommends one inclusive unit.

The evidence of the interdependence between employees in both areas of responsibility is strongly demonstrative of the community of interest. While this community of interest is strong, I am more persuaded by the efficient administration of government. Currently, most labor relations matters are done by joint resolution of the City Council and the Utility Board. A conclusion that two units would be appropriate would actually compel a

separation which does not currently exist. It could force a bifurcation of the work force which, in practice, does not currently exist. Two separate units under the circumstances extant in Eldridge would not promote the efficient administration of government, but it would act as a detriment. I would follow the guidance of the District Court of the Fifth Judicial District.

This Court is convinced that the bargaining representative of the unit formed by the Board, ..., can do as good a job for all the employees of the unit so formed as could two bargaining agents, ..., and that the best interest of both the public employer and his represented employees require, but one voice.<sup>9</sup>

I conclude that one bargaining unit is appropriate under the facts and circumstances of this case.

Issue No. 3

Is the position of City Clerk supervisory and/or confidential?

Section 20.3(7) of the Act defines confidential employee as follows:

"Confidential employee" means any public employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in negotiating or who works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the public employer.

"Confidential employee" also includes the personal secretary of any of the following: Any elected official or person appointed to fill a vacancy in an elective office, member of any board or commission, the administrative officer, director, or chief executive officer of a public employer or major division

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<sup>9</sup>Lucas County Memorial Hospital, 76 D. Ct. 14 at 12.

thereof, or the deputy or first assistant of any of the foregoing.

Section 20.4(2) of the Act defines supervisory employee as follows:

Supervisory employee means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not merely routine or clerical nature, but requires the use of independent judgement.

Both parties have cited the Iowa Supreme Court ruling in City of Davenport<sup>10</sup> in dealing with the supervisory issue. Neither side cited cases regarding the confidentiality issue.

The City argues that the City Clerk is the personal secretary to the Mayor and the City Council and has a close continuing working relationship with them. The City also contends that the City Clerk has in the past and may in the future be called upon to provide information for use in collective bargaining. The City also argues that if the City Clerk is not excluded, there would not be any employee to assist the City Administrator in preparation of information for collective bargaining.

The Association did not argue the confidentiality issue.

The City's argument is persuasive. Testimony indicates that the City Clerk has not had an active role in preparation for collective bargaining since the current City Administrator arrived in 1988, and I am not persuaded that this former function has not

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<sup>10</sup>City of Davenport, 264 N.W.2d 307 (1978).

been supplanted by the City Administrator. There is also insufficient evidence in the record to support a finding that the City Clerk works in the personnel offices of the employer. This also seems to be an exclusive function of the City Administrator. However, the City Clerk is definitively the personal secretary of the Mayor, City Council, and City Administrator. As the personal secretary to elected and appointed officials, the City Clerk's position in the City of Eldridge is per se excluded from the provisions of the Act and, therefore, the bargaining unit.

On the supervisory status of the City Clerk, the City argues that the City Clerk supervises all of the clerical staff. The City contends that she is recognized as a department head and her job description calls for her to act in a supervisory capacity with the office staff. As a department head, she has authority to hire or fire, or recommend hiring, firing or discipline. She has authorized overtime and leaves for subordinate employees. She has evaluated employees and recommended retention of employees.

The Association argues that none of the employees deemed by the City to hold supervisory status, including the City Clerk, perform any of the functions enumerated in Section 20.4(2) of the Act and should not be found to be supervisory.

The Iowa Supreme Court has stated:

The enumerated functions in the definition of supervisor are listed disjunctively; possession of any one of them is sufficient to make an employee a supervisor [cite omitted]. The power must exist in reality, not only on paper [cite omitted]. However, it is the existence of the power and not its exercise which is determinative [cites omitted]. What

the statute requires is evidence of actual supervisory authority "visibly translated into tangible examples [cites omitted]." <sup>11</sup>

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Moreover, the directing and assigning of work by a skilled employee to less skilled employees does not involve the use of independent judgement when it is incidental to the application of the skilled employee's technical or professional know-how. In such a situation the skilled employee does not exercise independent judgement as a representative of management within the meaning of the statutory requirement. <sup>12</sup>

There is no evidence that the City Clerk has ever played a significant role in hiring new employees. There is no transfer within the clerical staff of the City nor is there a promotional ladder. The City has a grievance procedure wherein the City Council is the sole arbiter of the grievance. There has been no discipline, suspension, or discharge within the clerical staff. Other than the recommendation for retention of a clerical employee which was done in conjunction with the previous City Administrator there is no evidence of authority to reward clerical employees. There has been no layoff or recall of clerical employees.

There is evidence that the City Clerk assigns tasks and provides direction to clerical employees. This direction is a function of the City Clerk's twenty-two years of employment with the City of Eldridge rather than a tangible example of authority. Concerning the secondary indicia of supervisory authority of

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<sup>11</sup>Id. at 314.

<sup>12</sup>Id.



training and evaluation, the training done is of office routine and does not rise to the level of supervisory authority. Evaluations have not been performed since 1988. Ostensibly, they were suspended due to a complex and cumbersome evaluation instrument. I find that a three year lapse is an inordinate amount of time to restructure an evaluation instrument and cannot conclude that this can be outcome determinative in the issue of supervisory status for the City Clerk. I conclude that the City Clerk's position is not supervisory pursuant to the Act.

Issue No. 4

Is the position of the Director of Public Works supervisory?

In the City of Davenport, the Iowa Supreme Court has also stated:

The status determination depends upon how completely the responsibilities of the position identify the employee with management. For supervisory status to exist this identification must be substantial [cites omitted].<sup>13</sup>

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The title a position carries has little bearing on whether it is supervisory. It is the function rather than the label which is significant [cite omitted].<sup>14</sup>

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Furthermore, the employee's regular functions and responsibilities are determinative. Temporary or occasional services as a supervisor is not disqualifying. "The test of whether a person is a supervisor depends not on what he may have as his responsibilities

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<sup>13</sup>Id.

<sup>14</sup>Id.

and authority under occasional or remote circumstances, but what his functions and responsibilities are in the normal course of affairs." [cite omitted]<sup>15</sup>

The City argues that the position of Director of Public Works is supervisory because he assigns and directs work, has effectively recommended employees for promotion and higher compensation levels, has written evaluations for subordinate employees and has the authority to resolve employee grievances. The Association's argument is set forth above.

Much of what was said regarding the supervisory status of the City Clerk is equally applicable to the Director of Public Works. Specifically, I cannot conclude that the Director of Public Works has authority to discipline, suspend, discharge, layoff, recall, or adjust employee grievances. The Director of Public Works does direct and assign on a daily basis. He has effectively recommended promotion and effectively recommended reward through higher compensation levels. He has effectively recommended hiring of subordinate employees. His approval of temporary transfer of employees to the Utility Department is required. There is ample evidence that the Director of Public Works exercises independent judgement in his decision-making in these areas. I conclude that the position of Director of Public Works is supervisory under the Act and is therefore excluded from the bargaining unit.

Issue No. 5

Is the position of General Manager of the utilities supervisory?

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<sup>15</sup>Id. at 315.

It is not necessary to reiterate what has been previously cited from City of Davenport.

The City argues that the General Manager is the only supervisor for the Utility Board and that he represents the Utility Board with IAMU and Iowa Rural Water Association meetings. The City notes that the General Manager recommends individuals to be hired and recommends compensation for employees. The City contends that the General Manager approves leaves and can adjust grievances for public employees. He also represents the Utility Board with contractors and subcontractors. He is the head of day to day operations. The Association argues that the General Manager does not meet any supervisory criteria.

The General Manager of the Utilities is very similar in functions to the Director of Public Works. He assigns and directs on a daily basis, effectively recommends rewards through increased compensation, and approves temporary transfers. Here, also, is ample evidence of the exercise of independent judgement in his decision-making. While evidence of authority to hire, promote, discipline, suspend, discharge, layoff, recall, or adjust grievances is insufficient for supervisory criteria, the disjunctive nature of the criteria and evidence that his position substantially is identified with management lead me to conclude that the General Manager of the utilities is supervisory and therefore, excluded from the bargaining unit.

In summary, the City of Eldridge and the Eldridge Utility Board are joint employers of a single bargaining unit. The City

Clerk is excluded from the bargaining unit as a confidential employee. The Director of Public Works and the General Manager of the utilities are excluded from the bargaining unit as supervisory employees. I therefore find that the following constitutes an appropriate unit for purposes of collective bargaining pursuant to Section 13.2 of the Act:

INCLUDED: All regular full-time city hall, public works and utility employees working thirty-two (32) hours or more per week.

EXCLUDED: City Administrator, City Clerk, Director of Public Works, General Manager, Police, all other city employees and all employees excluded by Section 4 of the Act.

On the basis of the foregoing Findings of Fact and Conclusions of Law, I hereby issue the following:

ORDER

IT IS HEREBY ORDERED that an election be conducted, under the supervision and direction of the Public Employment Relations Board, at a time and place to be determined by the Board. Eligible to vote are all employees during the payroll period immediately preceding the date below and who are also employed in the bargaining unit on the date of the election.

IT IS FURTHER ORDERED that the public employer in this case submit to the Public Employment Relations Board within seven days an alphabetical list of the names, addresses and job classifications of all the eligible voters in the unit described above.

DATED at Des Moines, Iowa this 15th day of March, 1991.

*Charles E. Boldt*

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CHARLES E. BOLDT  
ADMINISTRATIVE LAW JUDGE